

ORDINANCE NO. 99-42

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING THE UNIFIED LAND DEVELOPMENT CODE OF PALM BEACH COUNTY, FLORIDA, ORDINANCE NO. 92-20, AS AMENDED, AS FOLLOWS: (SEC. 14.3 GROUNDWATER AND NATURAL RESOURCES PROTECTION BOARD); PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE UNIFIED LAND DEVELOPMENT CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 125, Florida Statutes, establishes the right and power of counties to provide for the health, welfare, and safety of existing and future residents by enacting and enforcing land development and administrative regulations necessary for protection of the public; and

WHEREAS, Palm Beach County Ordinance 92-20 provided for the adoption of the Unified Land Development Code on June 16, 1992, pursuant to Section 163.3202, Florida Statutes to further growth management requirements; and

WHEREAS, the Legislature has amended Chapter 162, Florida Statutes, to require owners of property subject to an enforcement proceeding to disclose certain information prior to transfer of the property; and

WHEREAS, the Legislature has amended Chapter 162, Florida Statutes, to permit counties having a population equal to or greater than 50,000 to adopt an ordinance giving code enforcement boards or special masters, or both, the authority to impose increased fines; and

WHEREAS, the proposed amendments to the Unified Land Development Code have been reviewed by the Citizens Task Force at public workshops and recommendations of the Citizens Task Force were forwarded to the Board of County Commissioners; and

WHEREAS, the Citizens Task Force, sitting as the Land Development Regulation Commission, finds that this amendment to the Unified Land Development Code is consistent with the Comprehensive Plan; and

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

SEC. 14.3 GROUNDWATER AND NATURAL RESOURCES PROTECTION BOARD.

Art.9 (except Sec. 9.4), or Sec. 7.6, of this Code may be referred by ERM and

1 prosecuted by the Groundwater and Natural Resources Protection Board pursuant to
2 the following standards and procedures.

3 **A. Warning of violation.** If an alleged violation of Art. 9 (except Sec. 9.4), or Sec. 7.6
4 of this Code is found, the Director of ERM or his/her designee shall notify the
5 alleged property owner and/or violator and give the alleged property owner and/or
6 violator reasonable time to correct the violation.

7 **B. Issuance of violation citation.** Should the violation continue beyond the time
8 specified for correction, or irreparable or irreversible harm has occurred, or the
9 violation presents a serious threat to the public health, safety, and welfare, the
10 Director of ERM or his/her designee shall make a reasonable effort to notify the
11 violator and may immediately notice the Groundwater and Natural Resources
12 Protection Board and request a hearing.

13 **C. Notices of hearing.** (1) All notices required herein shall be provided to the alleged
14 violator by:

15 (a) Hand delivery;

16 (b) Certified mail (return receipt requested) provided if such notice is sent under
17 this paragraph to the owner of the property in question at the address listed
18 in the tax collector's office for tax notices, and at any other address provided
19 to Palm Beach County by such owner and is returned as unclaimed or
20 refused, notice may be provided by posting as described in subparagraphs (2)
21 (b) 1. and 2. and by first class mail directed to the addresses furnished to
22 Palm Beach County with a properly executed proof of mailing or affidavit
23 confirming the first class mailing; or

24 (c) Leaving the notice at the alleged property owners and/or violators usual place
25 of residence with any person residing therein who is above fifteen (15) years
26 of age and informed of the contents of the notice;

27 (d) In the case of commercial premises, leaving the notice with the manager or
28 other person in charge.

29 The Notice of Hearing shall contain a statement of the time, place and nature of the
30 hearing before the Groundwater and Natural Resources Protection Board.

1 (2) In addition to providing notice as set forth in subsection (1), at the option of
2 the Groundwater and Natural Resources Protection Board, notice may also
3 be served by publication or posting, as follows:

4 (a) In lieu of publication as described in paragraph (b), such notice may be
5 posted at least 10 days prior to the hearing, or prior to the expiration of any
6 deadline contained in the notice, in at least two locations, one of which shall
7 be the property upon which the violation is alleged to exist and the other of
8 which shall be at the front door of the courthouse in Palm Beach County.

9 (b) Proof of posting shall be by affidavit of the person posting the notice, which
10 affidavit shall include a copy of the notice posted and the date and places of
11 its posting.

12 Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection (1),
13 together with proof of publication or posting as provided in subsection (2), shall be sufficient to
14 show that the notice requirements of this Ordinance have been met, without regard to whether or not
15 the alleged violator actually received such notice.

16 **D. Correction of violation.** If the alleged violation is corrected and then recurs, or if
17 the violation is not correct by the time specified for correction, the Director of ERM
18 or his/her designee may issue a Violation Citation and a Notice of Hearing to the
19 alleged property owner and/or violator and schedule a hearing. The Groundwater and
20 Natural Resources Protection Board may hear the alleged violation in this instance,
21 even if it has been corrected prior to the Board hearing and every notice shall so state.

22 **E. Counsel.** The County Attorney shall be counsel to the Groundwater and Natural
23 Resources Protection Board.

24 **F. Transfer of Property.** If the owner of property which is subject to a code
25 enforcement proceeding transfers ownership of such property between the time the
26 notice of violation was served and the time of the hearing, such owner shall:

27 1. Disclose, in writing, the existence and the nature of the proceeding to the
28 prospective transferee.

2. Deliver to the prospective transferee a copy of the notices and other materials relating to the Groundwater and Natural Resources Protection Board proceeding received by the transferor.
3. Disclose, in writing, to the prospective transferee that the new owner will be responsible for compliance with the applicable code and with orders issued in the Groundwater and Natural Resources Protection Board proceeding.
4. File a notice with the Department of ERM of the transfer of the property, with the identity and address of the new owner and copies of the disclosures made to the new owner, within 5 days after the date of the transfer.

A failure to make the disclosures described in paragraphs (1), (2), and (3) before the transfer creates a rebuttable presumption of fraud. If the property is transferred before the hearing, the hearing shall not be dismissed, but the new owner shall be provided a reasonable period of time to correct the violation before the hearing is held.

G. Procedure at hearings. Alleged violations of any of those sections described herein may be filed with the Groundwater and Natural Resources Protection Board by citizens or those officials who have the responsibility of enforcing such sections.

1. The Groundwater and Natural Resources Protection Board shall proceed to hear the cases on the agenda for that day. All testimony shall be under oath and shall be recorded. Each case before the Groundwater and Natural Resources Protection Board shall be presented by the Director of ERM or his/her designee. The Groundwater and Natural Resources Protection Board shall take testimony from County staff, if relevant, the alleged property owner and/or violator, and other relevant testimony. Formal rules of evidence shall not apply, but fundamental due process shall be observed and govern the proceedings. Upon determination of the chairperson, irrelevant, immaterial or unduly repetitious evidence may be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of Florida. The burden of proof shall be

1 upon the Director of ERM or his/her designee to show by a preponderance of
2 the evidence that a violation does exist.

3 2. Any member of the Groundwater and Natural Resources Protection Board,
4 or the attorney representing the Groundwater and Natural Resources
5 Protection Board, may inquire of or question any witness before the
6 Groundwater and Natural Resources Protection Board. Any member of the
7 Groundwater and Natural Resources Protection Board, an alleged violator
8 (hereinafter also referred to as respondent) his/her attorney, or Code Officers
9 shall be permitted to inquire of any witness before the Groundwater and
10 Natural Resources Protection Board. The Groundwater and Natural
11 Resources Protection Board may consider testimony presented by ERM, the
12 respondent or any other witnesses.

13 3. At the conclusion of the hearing, the Groundwater and Natural Resources
14 Protection Board shall orally render its decision (order) based on evidence
15 entered into the record. The decision shall be by motion approved by the
16 affirmative vote of those members present and voting, except that at least
17 four (4) members of the Groundwater and Natural Resources Protection
18 Board must vote for the action to be official. The Groundwater and Natural
19 Resources Protection Board's decision shall then be transmitted to the
20 respondent in the form of a written order including finding of facts, and
21 conclusions of law consistent with the record. The order shall be transmitted
22 by certified mail or hand delivery to the respondent within ten (10) days after
23 the hearing. The order may include a notice that it must be complied with by
24 a specified date and that a fine and costs may be imposed and under the
25 circumstances set forth in Section 14.3.H. The cost of repairs or other
26 corrective action may be included along with the fine if the order is not
27 complied with by said date. A certified copy of such order may be recorded
28 in the public records of Palm Beach County and shall constitute a notice to
29 any subsequent purchasers, successors in interest, or assigns if the violation
30 concerns real property, and the findings therein shall be binding upon the

1 violator, and if the violation concerns real property, any subsequent
2 purchasers, successors in interest, or assigns. If an order is recorded in the
3 public records pursuant to this paragraph and the order is complied with by
4 the date specified in the order, the Groundwater and Natural Resources
5 Protection Board shall issue an order acknowledging compliance that shall
6 be recorded in the public records. A hearing is not required to issue such an
7 order acknowledging compliance.

8 If Palm Beach County prevails in prosecuting a case before the Groundwater
9 and Natural Resources Protection Board, it shall be entitled to recover all
10 costs incurred. Whether and to what extent such costs are imposed shall be
11 within the discretion of the Groundwater and Natural Resources Protection
12 Board but shall not exceed the costs incurred.

13 **H. Powers.** The Groundwater and Natural Resources Protection Board shall have the
14 power to:

- 15 1. Adopt rules for the conduct of its hearings.
- 16 2. Subpoena alleged violators and witnesses to its hearings. Subpoenas may be
17 served by a Sheriff or other authorized persons consistent with Rule 1.410(c),
18 Florida Rules of Civil Procedure upon request by the Chairperson.
- 19 3. Subpoena records, surveys, plats and other documentary materials.
- 20 4. Take testimony under oath.
- 21 5. Issue orders having the full force and effect of law to command whatever
22 steps are necessary to bring a violation into compliance.
- 23 6. Assess fines pursuant to Sec. 14.3. I (Administrative fines; costs; liens) of
24 this Article.
- 25 7. Lien property pursuant to Sec. 14.3. I (Administrative fines; costs; liens) of
26 this Article.
- 27 8. Assess costs pursuant to Sec. 14.3. I.

1 **I. Administrative fines; costs; liens.**

2 **1.** Whenever one of the Groundwater and Natural Resources Protection Board's
3 orders has not been complied with by the time set for compliance, or upon
4 finding that a repeat violation has been committed, the Groundwater and
5 Natural Resources Protection Board may order the violator to pay a fine in an
6 amount specified in this section for each day the violation continues past the
7 date for compliance set forth in the order, or in the case of a repeat violation,
8 for each day the repeat violation continues, beginning with the date the repeat
9 violation is found to have occurred by the code inspector. In addition, if the
10 violation is a violation described in Section 14.3.B., the Groundwater and
11 Natural Resources Protection Board shall notify the Board of County
12 Commissioners, which may make all reasonable repairs or other corrective
13 actions which are required to bring the property into compliance and charge
14 the violator with the reasonable costs of the repairs or other corrective actions
15 along with the fine imposed pursuant to this section. Making such repairs
16 does not create a continuing obligation on the part of Palm Beach County to
17 make further repairs or to maintain the property and does not create any
18 liability against Palm Beach County for damages to the property if such
19 repairs were completed in good faith. If a finding of a violation or a repeat
20 violation has been made as provided in this part, a hearing shall not be
21 necessary for issuance of the order imposing the fine. A repeat violation shall
22 mean a violation of this Ordinance by a person who, within 5 years prior to
23 the violation, has been previously found by the Groundwater and Natural
24 Resources Protection Board to have violated or who has admitted violating
25 the same provision within 5 years prior to the violation, notwithstanding the
26 violations occurred at different locations.

27 Persons charged with such violation(s) may include:

28 **a.** The owner, agent, lessee, tenant, contractor, or any other person using
29 the land, building, or premises where such violation has been
30 committed or shall exist.

1 b. Any person who knowingly commits, takes part or assists in such
2 violation.

3 c. Any person who maintains any land, building, or premises in which
4 such violation shall exist.

5 2. A fine, imposed pursuant to this Section shall not exceed \$1,000 per day for
6 a first violation and shall not exceed \$5,000 per day for a repeat violation,
7 and in addition, may include all costs of repairs pursuant to paragraph 1. of
8 this Section. For violations deemed irreparable or irreversible by the
9 Groundwater and Natural Resources Protection Board, the Board may impose
10 a fine not to exceed fifteen thousand (\$15,000) dollars per violation, pursuant
11 to Section 162.09, Fla. Stat. as may be amended. In determining the amount
12 of a fine, the Groundwater and Natural Resources Protection Board shall
13 consider the following factors: (a) the gravity of the violation(s); (b) any
14 actions taken by the violator to correct the violation(s); and (c) any previous
15 violations committed by the violator.

16 3. The Director of ERM may record a certified copy of an order imposing a fine,
17 or a fine plus repair costs, in the public records in the Office of the Clerk of
18 the Circuit Court in and for Palm Beach County, Florida. Once recorded the
19 certified copy of an order shall constitute a lien against the land on which the
20 violation(s) exists, and upon any other real or personal property owned by the
21 violator; and it shall be enforceable in the same manner as a court judgment,
22 by the Sheriff, including execution and levy against the personal property of
23 the violator. Once recorded the lien shall be superior to any mortgages, liens,
24 or other instruments recorded subsequent to the filing of the Groundwater and
25 Natural Resources Protection Board lien.

26 4. After six (6) months from the filing of any such lien which remains unpaid,
27 the County may foreclose the lien in the same manner as mortgage liens are
28 foreclosed. Such lien shall be superior to all other liens except liens for
29 taxes, and shall bear interest at the rate of ten percent (10%) per annum from
30 the date recorded. No lien created pursuant to the provisions of this

ordinance may be foreclosed on real property which is a homestead under Article X, Section 4, of the Florida Constitution.

J. Appeal. Any aggrieved party may appeal an order of the Groundwater and Natural Resources Protection Board, including Palm Beach County, to the Circuit Court of Palm Beach County, Florida. Such appeal shall not be a hearing de novo, but shall be a petition for Writ of Certiorari and the Court shall be limited to appellate review of the record created before the Groundwater and Natural Resources Protection Board. Any appeal filed pursuant to this Article shall be considered timely if it was filed within thirty (30) days of the execution of the order to be appealed. The County may assess a reasonable charge for the preparation of the record to be paid by the petitioner in accordance with Sec. 119.07, Fla. Stat.

PART 3. REPEAL OF LAWS IN CONFLICT:

All local laws and ordinances applying to the unincorporated area of Palm Beach County in conflict with any provision of this Ordinance are hereby repealed to the extent of any conflict.

PART 4. SEVERABILITY:

If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held by a Court to be unconstitutional, inoperative or void, such holding shall not affect the remainder of this Ordinance.

PART 5. INCLUSION IN THE UNIFIED LAND DEVELOPMENT CODE:

The provision of this Ordinance shall become and be made a part of the Unified Land Development Code of Palm Beach County, Florida. The sections of the Ordinance may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section," "article," or any other appropriate word.

PART 6. EFFECTIVE DATE:

The provisions of this Ordinance shall become effective upon filing with the Department of State.

APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach County,

Florida, on this the 19th day of October, 1999.

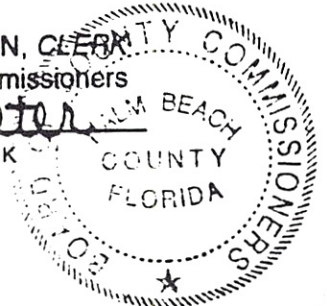
PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

By: Mande Ford Lee
Chair

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: [Signature]
Assistant County Attorney

DOROTHY H. WILKEN, CLERK
Board of County Commissioners
By: Deborah Dieter
DEPUTY CLERK



EFFECTIVE DATE: Filed with the Department of State on the 28th day of October 1999.

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STATE OF FLORIDA COUNTY OF PALM BEACH
I, DOROTHY H. WILKEN, ex-officio Clerk of the
Board of County Commissioners, do hereby certify this to be a
true and correct copy of the original filed in my office
on October 19, 1999
DATED at West Palm Beach, FL on 11/8/99
DOROTHY H. WILKEN, CLERK
By: Diane Brown D.C.